
(2014) 12 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24653 of 2014

Ramanjeet Kaur

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 178 PLR 461

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : R.K. Chopra, Sr. Advocate and J.S. Jaidka, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.

1. The Director General of Police, Punjab invited applications from amongst eligible candidates for recruiting 3726 male and 2000 female candidates as constables in district police cadres for which a district-wise break up of vacancies was advertised. Applications were invited by October 17, 2011. The petitioner applied in the female category. She was found eligible and was called for Physical Measurement Test (PMT) and Physical Efficiency Test (PET) on November 10, 2011 at Faridkot. In all, 13,500 female candidates appeared for both the tests conducted on different dates for different districts in the State of Punjab. However, barely 365 female candidates were able to qualify the PET as per prescribed norms in District Police Cadre, Bathinda as against 600 posts allocated to the district. These 365 candidates including the petitioner were called for interviews which did not materialize as the viva voce test was cancelled. The petitioner was again called for interview on November 22, 2011 but it was again cancelled. It is the say of the petitioner that cancellation of the interview process had resulted from a severe shortfall of candidates in qualifying the PET as out of the 600 posts as few as 365 made it. It appears from the writ record that with a

view to meet the shortfall a fresh PET was ordered after relaxing norms for female candidates laid down in the advertisement for PET which was named a golden chance. It is the say of the petitioner that no corrigendum was issued for relaxing norms in PET and candidates were informed on their mobile phones, the numbers of which had been taken at the time of conducting of the earlier test. In the relaxed standard process, 2000 candidates qualified and were declared pass in the PET and their names were published in the Daily Ajit and other newspapers. A fresh date for interview was fixed on December 02, 2011. The petitioner appeared in the interview. The result was declared and a list of selected candidates was published and displayed on December 18, 2011 but the name of the petitioner did not find mention in the list of successful candidates. She made no complaint of her non-selection till she served a legal notice on the respondents dated 30th September 2014 and brought this petition on 1st December 2014 which came up for hearing the next day when Mr. R.K. Chopra, learned senior advocate was heard on admission of the matter. The learned senior counsel argues that once norms of PET were laid down in the advertisement the same could not be reduced in standards or changed to the detriment of the petitioner without issuing a corrigendum and inviting fresh applications to undergo the entire process of selection de novo after declaring the recruitment process in-fructuous. Candidates who had not made it in the test earlier came to flood the zone of consideration by relaxed standards vitiating the entire selection process of recruiting female Constables in the district concerned. It is contended that calling candidates on their telephone/mobiles was not permissible in law and the petitioner had a preferential right of consideration in appointment over and above the candidates who were unable to qualify the PET earlier but were called again after reducing the norms of PET only to accommodate them for extraneous reasons. This clearly shows that the selection was made in a most illegal and arbitrary manner by ignoring the legitimate rights of the petitioner and other candidates who have qualified the PET in the first instance in terms of the advertisement. It is his further submission that qualifications prescribed in the advertisement cannot be relaxed and the fresh test ordered deserved to be confined to such candidates as had not qualified in the earlier tests. Enlarging the zone and dunking the petitioner to compete for the test again in a cesspool has effaced her earlier performance even though she had made it to the first 365 candidates to whom appointments could be offered as per merit. This repeat procedure has infringed her preserved rights in the first PET and unfairly disadvantaged her by putting her back in the fray of competition in a sea of applicants without just cause or legal justification.

2. It happens that the complaint made in this petition filed on December 01, 2014 forms subject matter of CWP No. 773 of 2012 filed by two aggrieved candidates i.e. Baljeet Kaur and Balwinder Kaur who were similarly placed as the petitioner as they too had qualified the first PET but did not find their names mentioned in the Final Select List. The petition was disposed of on January 31, 2013 by this Court with a direction to the respondents to consider the claim of

the petitioners therein for appointment as per the initial criteria which was advertised on October 03, 2011 and if the petitioners make the grade, as per the said criteria from amongst the candidates who had cleared the second stage, as per the then fixed criteria, appointment letters be issued to them within a period of one month, in which case they would be entitled to consequential benefits except financial. Since the directions were not complied with, COCP No. 1691 of 2013 was filed and was pending when the respondent-State filed Review Application No. 175 of 2014 in the main writ petition. The review application was filed on the premise that the assertion of the petitioner in the petition was factually incorrect that 365 candidates had qualified the PET whereas the correct position as mentioned in the written statement filed by the State in defence of the aforesaid writ petition was that out of 11162 eligible women candidates, 1190 had qualified and not just 365 as alleged by the petitioners. With the re-conduct PET a substantially larger number of women candidates qualified thereby raising the total number to 2517 candidates. Out of total 600 vacancies meant for women in district Bathinda district, only 300 vacancies were meant for the general category candidates to which the said two petitioners belonged and their claim was considered accordingly. The learned Single Judge who had issued the directions on January 31, 2013 while seized of the Contempt Petition where His Lordship clarified that his judgment was not based primarily on facts, but on the principle that after the selection process has been initiated, the rules of the game cannot be changed and this principle was based on the rulings of the Supreme Court in the cases; Amlan Jyoti Borooah Vs. State of Assam and Others, , Rakhi Ray and Others Vs. The High Court of Delhi and Others, , Pramod K. Pankaj Vs. State of Bihar and Others, , State of Orissa and Another Vs. Mamata Mohanty, . In those circumstances, the review application was found misconceived and was dismissed on April 02, 2014. As an aftermath of the decision, an administrative order was passed by the Senior Superintendent of Police, Bathinda on July 16, 2014 offering appointment to Baljeet Kaur as lady Constable in District Police Cadre, Bathinda who was allotted a constabulary number but was ordered to be subject to Letters Patent Appeal No. 1108 of 2014 titled State of Punjab and others v. Baljit Kaur and another preferred against the basic order. The appointment order was also made subject to any other writ petition (s) pending in any Court in this regard.

3. It appears to this Court of vital importance that when the writ court issued notice of motion in CWP No. 773 of 2012 an interim order was passed in favour of Baljeet Kaur and Balwinder Kaur [Co-petitioner] to the effect that two posts of Constable (Female) will be kept vacant for the petitioners in case they succeed. This fact is noticed within the orders passed in the intra court appeal placed as an annexure in the present writ file. Therefore, in that case the petitioners had secured for themselves protection by the Court from where relief could easily flow in the event of success of the petition notwithstanding time spent in the decision-making in the proceedings.

4. However, a point of earlier consideration and a distinction is found within the

judgment dated January 31, 2013 in CWP No. 773 of 2012 where the diluted standards contained in Standing Order No. 3/2010 are found reducing the minimum standards prescribed for the PET. In this Standing Order, the standard of long jump was reduced marginally for women from 3.25 mtrs. to 3.00 mtrs., while high jump from 1.05 mtrs. To 0.95 mtrs. in the same usual chances (3). This Standing Order was a preexisting executive instruction and was applied to female constables alone for the recruitment process 2011. It is a fortuitous circumstance that the petitioner qualified the advertised standard but failed to meet the mark in its relaxed form.

5. It may be mentioned that LPA No. 1108 of 2014 failed before the Division Bench on August 11, 2014 and the orders of the learned Single Judge were affirmed. In the appeal court reliance placed by the State of Punjab on the Supreme Court ruling in Ramesh Chandra Shah and Others Vs. Anil Joshi and Others, was distinguished when it is found that the facts of the cited case disclosed that there was no change of criteria in the middle of the selection process as in the present recruitment process. In a situation as the one which obtains in Ramesh Chandra Shah's case is that the principle of "waiver" becomes applicable and a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

6. With the order passed in Baljeet Kaur's case in the petitioner's hand, she for the first time agitated her rights since 2011 by serving a legal notice on the respondents through Registered AD post dated September 30, 2014 claiming appointment on those principles approved and applied by this Court in the aforesaid case. The respondent State was warned in the legal notice that in case the benefit of the judgment passed in CWP No. 773 of 2012 rendered on January 31, 2013 was not extended in her favour she would be constrained to approach the High Court in its writ jurisdiction, in which case, the State would be responsible for costs and consequences.

7. It may be pointed out that even prior to the filing of CWP No. 773 of 2012, two writ petitions had been filed in this Court on the same subject matter being CWP No. 22443 of 2011; Santosh Rani and others v. State of Punjab and others and CWP No. 24099 of 2011 titled Rani v. State of Punjab and others which were filed by female candidates similarly situated as the petitioner. It appears that these petitions were filed at the stage when the departure was made from norms prescribed in the advertisement by relaxing standards of the PET. It is evident that these petitions were filed at the earliest stage for vindication of rights of those who had appeared in the first PET. These two petitions were kept pending by order on account of the fact that LPA No. 1108 of 2014 was pending consideration which now stands dismissed. The two pending petitions came up for hearing afterward. Both the writ petitions have been disposed of by the learned Single Judge by the order dated November 20, 2014 which reads as follows:-

"It is not in dispute that the cause espoused in the aforesaid writ petitions is squarely covered by the ratio of judgment rendered in CWP No. 773 of 2012 which was allowed. These petitions were, however, kept pending on account of the fact that LPA No. 1108 of 2014 had been preferred against the said judgment which also now stands dismissed. If that is so, then I deem it appropriate to dispose of the aforesaid writ petitions in terms of CWP No. 773 of 2012 as upheld in LPA No. 1108 of 2014."

8. Mr. Chopra claims the same relief and prays that a direction be issued to the respondents to consider and decide his client's legal notice dated September 30, 2014 (P-9) in the light of the above short order and the rulings that preceded it.

9. During the course of arguments, I asked Mr. Chopra as to whether the case of the petitioner was on all fours with past judicial precedent on the subject and if a reasonable distinction can be drawn between the two proceedings on the question of delay and laches, if not bar of limitation as I find no explanation in the body of the writ petition as to the reasons of delay in approaching Court in a matter of direct recruitment process initiated in the year 2011 where time is of the essence in public employment through direct recruitment and posts cannot be kept vacant to await future litigation that may or may not happen. The posts of Constables in District Police are inherently vital to policing and deserve to be filled as soon as possible so that the State's duty to maintain law and order is not jeopardized. Senior counsel was at a loss to show from his petition any explanation offered for approaching court after culpable delay. Nor was a sufficient cause shown or an explanation furnished for the belated approach to this Court to take recourse to law.

10. The advertisement was published on October 03, 2011. This was followed by PMT and PET involving over ten thousand women candidates. PMT and PET were conducted on November 10, 2011. The interview fixed on November 22, 2011 was cancelled. The petitioner was never interviewed. Meanwhile, PET standards were relaxed. She eagerly participated in the re-conduct PET without demur or calling in question the fresh process ordered de novo. She appeared for the first time for interview on December 02, 2011 after re-conduct of PET [not PMT]. On December 18, 2011 the result was declared and made public where her name was not listed among the successful aspirants. Unlike the petitioners; Santosh Rani and others in CWP No. 22443 of 2011 and Rani in CWP No. 24099 of 2011 and thereafter Baljeet Kaur and Balwinder Kaur, the petitioner neither approached this Court nor raised a demand for justice through representations, memorials etc. to the Director General of Police, Punjab as a person aggrieved might. She kept mum until she raised the dispute for the first time through legal notice dated September 30, 2014 (P-9) upon which the claim in this petition is based for passing orders similar to those passed in the previous litigation where she was not a party. It has not been disclosed in the petition as to the stage when Baljeet Kaur and Balwinder Kaur approached this Court in 2011 whether before the re-conduct PET or soon thereafter but before the result of successful

candidates was declared on December 18, 2011. The petitioner would be an aggrieved person firstly to know of the date of cause of action accruing in her favour, when she was called to appear in the reconduct PET which she did without demur or calling the entire process in question. Secondly, the petitioner succumbed to the changed process and faced an interview on December 02, 2011 and once she willingly participated in the two stages she took her chances in a larger zone of consideration on relaxed standards but failed to make the grade. Norm relaxation was a concession given by the Director General of Police, Punjab to meet an emergent situation where 235 posts would have remained unfilled in District Police Cadre, Bathinda and possibly the exigencies of administration required the course adopted but which has been faulted by the learned Single Judge and in the internal appeal primarily on the ground that the rules of the game cannot be changed midway and if it was then it could not be then said that the action of the Director General of Police, Punjab was a good one.

11. The cause of action lastly accrued to the petitioner on December 18, 2011 when the result was declared but she did not find her name mentioned in the select list. The petitioner agitated her rights, if any, for the first time on September 30, 2014 before the respondents by serving on them a legal notice with not a single representation submitted earlier and has now approached this Court on December 01, 2014 about 13/14 days short of expiry of the period of limitation prescribed in case a civil suit was brought for the relief claimed in this petition though within limitation of 3 years prescribed for a suit.

12. The orders passed by this Court in CWP No. 773 of 2012 in the case of Baljeet Kaur and Balwinder Kaur have been passed in personam and they cannot be read as orders passed in rem. However, the legal principle on which the orders passed in Baljeet Kaur and Balwinder Kaur are based on the well recognized rule of law expounded in a plethora of judgments/precedents to which reference is not necessary to burden this order unnecessarily that when the process of selection is initiated on published terms and the norms fixed those should not be departed from. In the wake of the legal principle it remains the moot issue whether a candidate who has succumbed to the changed selection process; faced an interview, and participated willingly and without protest and failed on merit can such candidate complain after nearly three years of slumber to question the process of selection and challenge it. This is the distinguishing feature between the petitioner's case and the other three who wasted no time to approach this Court to vindicate their rights and ventilate their grievances and earned the well merited relief.

13. It is not the case projected in this petition that change of two of the three components of the PET for the original field of candidates has prejudiced the petitioner and the result changed accordingly to her detriment. In this case, when the relaxation was accorded by the Director General of Police, Punjab it seems to have been designed well to meet an extraordinary situation not contemplated when a fewer number of candidates could qualify for selection than

the advertised requirement of vacancies in the district concerned. If the zone of consideration was enlarged it was intended to meet an emergent situation by putting the entire lot of candidates to PET in one cohesive group so that the entire selection process for female candidates is put on a level playing field so that a single homogenous class of candidates is not split by two standards of physical efficiency creating two disparate streams in a single cadre, one tested on higher standards, one lower in a future joint seniority list, one looking down on the other. There does not appear to be any perversity, irrationality or arbitrariness in the decision to put the whole lot in one melting pot to cull out the most meritorious candidates from amongst the range of selection. There is a rule which law does not abhor, is that extraordinary situations call for extraordinary measures.

14. It is also not the case that the selection process had passed muster of the stage of interviews when the standard was relaxed or the rules of the game changed to the advantage or disadvantage of one or the other. The interviews were yet to be held. None of the candidates, had developed an indefeasible right to be called for interview much less a right to appointment. The final results of a selection process were beyond contemplation at the stage when the Director General of Police, Punjab took the decision apparently in public interest but not apparently with a view to tailor the result as he must have been concerned with the success of the recruitment drive and not individual interest.

15. It was thus incumbent upon the petitioner to have questioned the perceived right deprivation by lodging a protest in writing before the administrators in the first instance at the earliest opportunity even without having to approach this Court but before she ventured to the testing field and the interviews that followed to make the final stage to try her luck. That it may have turned the decision in her favour seems a far cry but at least she did not attempt to stop the juggernaut from rolling on in this manner she can be reasonably taken as a person not dissatisfied with what was changed as she may have still believed she would sail through the rewired selection process limited to stage after PET, the PMT still holding good stead for all and sundry. It is not urged before this Court in the grounds that once PET had been measured and recorded then it could not be done again at any cost or at that stage her right to be called for interview stood crystallized, vested and accrued and inviolable in her favour to secure her an appointment on the basis of that result and marks for the interview yet to be held. A constable is always expected to stay within physical fitness standards relaxed or otherwise as fixed. After all, she took her chances and a chance inherently depends on many variable factors which can become known only ex post facto. Therefore, I think that the principle of waiver can and should be applied to the case of the petitioner but not to those who were before the Court agitating their rights in the three writ petitions. It is often said that delay defeats equity and equity is the heart of writ jurisdiction from where it bleats.

16. In *S.S. Balu and Another Vs. State of Kerala and Others*, the Supreme Court

observed that delay itself defeats equity and relief can be denied on the ground of delay alone even though similar relief stands granted to other similarly situated persons who approach the Court in time.

17. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, the constitution bench of the Supreme Court while examining the scope of writ jurisdiction under Article 226 of the Constitution in the matter of seeking remedies observed that the Court in Article 226 may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

18. The writ Court may not act at the eleventh hour on a petition based on brinkmanship. In the present case, in the considered opinion of this Court, is that the marked features of the three previous litigations presented by so-called "similarly situated persons" are entirely different in content while in the case in hand the rigour mortis of delay and laches has set in and, therefore, those precedents are of no avail to the petitioner being clearly distinguishable on facts and time factors where thousands of contestants were elbowing each other out and merit could only be determined in fractions and decimals given the marks allotted for interview was a scant four.

19. Still further, when two posts of lady Constables were kept vacant by Court interim orders issued in CWP No. 773 of 2012 then such orders would have to be read in favour of those who have approached Court. It is another matter that those cases were decided by quirk of fate subsequent to orders passed in LPA No. 1108 of 2014 in a subsequently instituted petition. But that would not mean that those who approach the Court in December 2014 for the first time would have a fundamental or antecedent right to seek similar orders when in the meantime posts meant for direct recruitment advertised in the year 2011 have been filled up and the recruitment process stands covered by Law 23 of the Rules of Cricket becoming a dead ball. It is trite law that discrimination cannot be founded on orders of the Court.

20. It is also not the case that vacancies in female constable category are still available in the District Police Cadre at Bathinda where the claims of the petitioner could be satisfied even if a direction were issued. One cannot lose sight of the fact that in the meantime third party rights may have settled which cannot be disturbed by displacing the last candidate selected in the Constable (Female) category in the Bathinda zone to make way for the petitioner after such a lot of time has gone by. Those who sleep and slumber long should not be woken up so rudely that those who are awake may not be put to sleep and lose their rights earned while walking on their feet. When the house is declared full, a sleepwalker should not be ushered in to make the last ticket-holder give up his seat only to be rudely asked to leave the hall in which he has secured the right of admission to.

21. If the rights of the petitioner *ex facie* stand extinguished by the passing day it would then not be proper for this Court to make an order to the respondents to decide the legal notice which it is not statutorily bound to address itself to as argued by Mr. Chopra in the obverse, which I am unable to accept on any ground including that the prayer is innocuous and heavens won't fall if such a direction is issued to obtain the view of the respondents on the legal notice. Any such direction from the writ Court may send a wrong signal to the administrator that the Court has conveniently palmed off the case without understanding it and thereby failed to declare the rights of the party before it which was its constitutional duty and had the jurisdiction to decide. Moreso, to issue a time-bound directive in the face of a non-statutory legal notice served on the respondents in order to elicit a response from the administrative authority, after which to examine if a case is made out or not in quite possibly another round of litigation makes no sense to me. A person is aggrieved because he is actually aggrieved at the outset and seeks recourse to law by demanding justice and not because he feels aggrieved in a lawyer's office far away from the epicenter of grief and then by the passing hour searches for ways out of his old predicament and there, pronto, is born a legal notice and the rest follows as we know it with layers of litigation spiraling from a casual direction issued to decide a representation which the authority was not statutorily bound to act on nor should such a direction be forced upon it.

22. It has become the bane of litigants to throng this Court with representations and legal notices based on half-baked writ petitions asking for directions indiscriminately to the State functionaries to decide them when they possess no demonstrably vested or accrued right to the relief claimed. Trying to wrest an order from Court to help the creation of a fresh cause of action that has long been dormant, just as in this case. Every day of every week and each week of every month of every year when goes by is crucial to a case involving direct recruitment to public service where third party rights are settling in or have settled. I would therefore reject Mr. Chopra's request for any such casual directions to the respondents to decide the legal notice without even a *prima facie* demonstration of a subsisting actionable right/duty/remedy correlation and interdependence at the threshold to sustain a legally claimable relief in writ jurisdiction.

23. If the time of the Court is precious then the casual litigant must recognize that the bureaucrat's time is also precious. Each is called upon to discharge their Business in their respective workplaces and must be seen performing them while at the same time respecting each other's dockets without trampling on each other's toes and wasting each other's time unless justice dictates otherwise and for good and sufficient reason a case calls for interference and such directions are necessary in the facts and circumstances of the case to know what might weigh in the mind of the authority in government in the first instance before the Court begins its real work on a plenary challenge brought against administrative decision settling the rights of parties.

24. Writs, orders and directions are meant to be issued for securing an appointment but not for disappointment. Disappointment is legally non-justiciable when it makes for no lis or an actionable claim. For the reasons recorded above, I am at loss to find any just, equitable or plausible reason to interfere in the matter and would dismiss the petition in limine not finding sufficient merit to admit it for regular hearing and waste the further time of the Court on a stale claim presented albeit much too late in the day.